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OFFICE OF PETITIONS

In re Application of :
Taheri et al. : CORRECTED DECISION
Application No. 09/920981 : ON PETITION
Filed: 08/02/2001 :
Attorney Docket Number 39000 :

This is a corrected decision on the petition filed on 19 March, 2007, under 37 CFR 1.137(b)¹ to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(b)." This is not a final agency decision.

The application became abandoned on 10 November, 2005, for failure to timely file a proper response to the final Office

¹ Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continuing examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

action mailed on 9 May, 2005, which set a three (3) month shortened statutory period for reply. On 8 November, 2005, an amendment after final rejection and three (3) month extension of time were filed. However, the examiner found that the amendment was not compliant with 37 CFR 1.121, and therefore, the amendment failed to place the application in *prima facie* condition for allowance. Notice of Abandonment was mailed on 3 October, 2006. The petition under 37 CFR 1.137(a) filed on 13 November, 2006, was dismissed on 8 February, 2007.

A review of the record reveals the following:

On 9 May, 2005, a final Office action was mailed, setting forth a three (3) month shortened statutory period for reply.

On 8 November, 2005, a three (3) month extension of time and an amendment in response to the final rejection were filed.

On 12 December, 2005, a Notice of Non-Compliant Amendment (37 CFR 1.121) was mailed, stating that the amendment filed on 8 November, 2005, did not meet the requirements of 37 CFR 1.121, and that no new time period was provided since the non-compliant amendment is an after-final amendment.

On 18 January, 2006, an amendment after final rejection was filed.

On 16 March, 2006, a Notice of Non-Compliant Amendment (37 CFR 1.121) was mailed, stating that the amendment filed on 18 January, 2006, did not comply with the requirements of 37 CFR 1.121.

On 3 October, 2006, a Notice of Abandonment was mailed.

On 13 November, 2006, a petition under 37 CFR 1.181 and 1.137(a) was filed. The petition was dismissed on 8 February, 2007.

The present petition under 37 CFR 1.137(b) was filed on 19 March, 2007, accompanied by an amendment after final rejection.

Upon further review, the examiner has determined that the reply filed with the present petition under 37 CFR 1.137(b) fails to place the application in condition for allowance. As such, the petition must be **dismissed**, and the application remains **abandoned**.

In this regard, the only proper reply to a final Office action is a Notice of Appeal and fee, Request for Continuing Examination and submission under 37 CFR 1.114, a continuing application, or an amendment placing the application in *prima facie* condition for allowance. The examiner has determined that the amendment filed on 19 March, 2007, does not place the case in *prima facie* condition for allowance. A copy of the examiner's Advisory Action is enclosed for petitioner's reference.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By FAX: (571) 273-8300
 Attn: Office of Petitions

By hand: Customer Service Window
 Mail Stop Petition
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

The address in the petition is different from the correspondence address. A courtesy copy of this decision is being mailed to the address in the petition. All future correspondence, however, will be mailed solely to the address of record.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3231.



Douglas I. Wood
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Office of Petitions

Encl: Advisory Action

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<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 09/920,981</p>	<p>Applicant(s) TAHERI ET AL.</p>	
	<p>Examiner Kevin P. Kerns</p>	<p>Art Unit 1725</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 19 March 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) The period for reply expires ___ months from the mailing date of the final rejection.
 - b) The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) They raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) They raise the issue of new matter (see NOTE below);
 - (c) They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. Applicant's reply has overcome the following rejection(s): _____.
6. Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. For purposes of appeal, the proposed amendment(s): a) will not be entered, or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: 1-6,8-11 and 33-41.
- Claim(s) withdrawn from consideration: 12-32.

AFFIDAVIT OR OTHER EVIDENCE

8. The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. The request for reconsideration has been considered but does NOT place the application in condition for allowance because: the applicants' remarks and affidavit under 37 CFR 1.132 is insufficient to overcome the examiner's response set forth in sections 3 and 5 of the final rejection mailed May 9, 2005.
12. Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. Other: _____.

Kevin P. Kerns
Primary Examiner
Art Unit: 1725